HC-KAR

NC: 2025:KHC-K:3440-DB
WP No. 201680 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS. JUSTICE K S HEMALEKHA

WRIT PETITION NO.201680 OF 2023 (S-KAT)

BETWEEN:

THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE
ROOM NO. 514, 5TH FLOOR,
M.S. BUILDING,
VIDHANA SOUDHA, DR. AMBEDKAR VEEDHI,
BENGALORE – 560 001.

…PETITIONER

(BY SMT. MAYA T. RAJANNA, HCGP)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

SRI. SOMASHEKAR
S/O LATE KASHYAPPA PATIL,
AGED ABOUT 59 YEARS,
WORKING AS FIRST DIVISION ASSISTANT,
OFFICE OF THE TAHASILDAR,
BHALKI, BIDAR – 585 401.

…RESPONDENT

(BY SRI. AVINASH A. UPLOANKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE WIRT OF CERTIORARI/ORDER/DIRECTION, QUASHING THE ORDER PASSED BY KARNATAKA ADMINISTRATIVE TRIBUNAL, KALABURAGI IN APPLICATION NO.1138/2018 DATED 24.02.2022 VIDE ANNEXURE-A AND THERE BY PLEASE CONSIDER THE COST OF THE PRESENT WRIT PETITION AS DEEMED FIT AND PROPER BY THIS HON'BLE COURT.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MRS. JUSTICE K S HEMALEKHA

CAV ORDER

(PER: HON'BLE MRS. JUSTICE K S HEMALEKHA)

The present writ petition is filed by the State assailing the legality and correctness of the order dated 24.02.2022 in Application No.1138/2018 on the file of the Karnataka State Administrative Tribunal at Kalaburagi (hereinafter referred to as "Tribunal" for short) whereby, the application filed by the respondent, challenging the Government's order, imposing the penalty of compulsory retirement from service was allowed. By the impugned order, the Tribunal set aside the disciplinary penalty and directed reinstatement of the respondent into service

forthwith, along with all consequential benefits, including monetary benefits to which the respondent is legally entitle.

Brief facts:

2. One Veerashetty lodged a complaint against the respondent, who was serving as a First Division Assistant in the office of the Deputy Commissioner, Bidar, alleging that the respondent had demanded a bribe of Rs.5,000/- in connection with an application submitted by Veerashetty for the conversion of his agriculture land bearing Sy.No.6/2, measuring 04 acres 20 guntas situated at Hamilapur village. In the complaint, it was stated that the bribe was allegedly demanded for dispatching and supplying a copy of the conversion order, and it is further alleged that the respondent accepted the bribe amount of Rs.5,000/- in this regard. Based on the complaint, FIR was registered in Crime No.6/2012 by the Lokayukta Police for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of

Corruption Act, 1988. Thereafter, a trap was laid and recovered the bait money. A charge sheet was filed in Spl. Case No.12/2013. Subsequently, the Lokayukta issued observation note based on the said incident. The respondent has submitted his reply to the said observation. The report was submitted, recommending initiation of an enquiry against the respondent. The Lokayukta entrusted the matter to Upalokayukta, based on the Government order, appointed the Additional Registrar of Enquiries-10 as Enquiry Officer. The Enquiry Officer issued Article of Charge, alleging that the respondent demanded and accepted bribe of Rs.5,000/- on 28.08.2012.

3. The respondent filed objections, denying the charges and asserted that he neither demanded nor received any bribe. During the enquiry, the Disciplinary Authority examined four witnesses and marked eight documents. The respondent examined himself as DW.1 and produced two documents. The Enquiry Officer

submitted a report concluding that the charge was proved. Based on that report, the Upalokayukta recommended for imposition of penalty of compulsory retirement. The respondent initially approached the Tribunal in Application No.6104/2017 challenging the enquiry report, but later withdrew it with liberty to re-approach after the final order. Upon passing of an order imposing compulsory retirement, the respondent has filed the present application before the Tribunal challenging the said order. The Tribunal, by its impugned order, held that the evidence presented before the disciplinary inquiry suffered from material contradictions and failed to establish the crucial element of demand and acceptance of bribe by the respondent. It noted that PW.1- the complainant, had categorically admitted during cross-examination that the respondent never demanded money, and further admitted that no documents were pending before the respondent at the time of alleged demand as the relevant work had been completed. Additionally, PW.2 - the shadow witness,

deposed that the respondent was not present in the office, and both he and the complainant had gone to the canteen to meet him. However, this contradicted PW.1's version, who claimed to have taken the respondent from the office to the canteen.

4. Furthermore, PW.2 stated that after receiving the money, the respondent placed it in his pant hip-pocket, while PW.1 claimed that the money was kept in shirt pocket, exposing a further inconsistency in the evidence. Further, the Tribunal observed that the investigating officer - PW.3, testified that he had provided a tape recorder to the complainant to record the conversation containing the alleged demand. Having not produced the recording or device during the enquiry, the Tribunal held that the Enquiry Officer failed to consider this significant lapse in proving demand. The Tribunal also considered the evidence of PW.4 and official witness who stated that he had not personally witnessed the demand or acceptance of any bribe by the respondent. The Tribunal

by taking into account the contradictory evidence, and lack of direct witness testimony to the alleged demand and acceptance, concluded that the guilt in the enquiry report was not sustainable and set aside the order of penalty imposing compulsory retirement by the Disciplinary Authority. Aggrieved by the order of the Tribunal, the State is before this Court in this writ petition.

5. We have heard the learned High Court Government Pleader for the State and learned counsel appearing for the respondent.

6. Learned counsel appearing for the respondent submits that the charges, evidence and witnesses in both the departmental enquiry and the criminal proceedings are identical and substantially similar. It is further submitted that criminal proceedings initiated against the respondent has been quashed on its merits in Criminal Appeal No.200214/2023 by this Court on 26.07.2024. In such circumstance, it is argued that upholding the finding of the

disciplinary proceedings would be unjust, oppressive and legally unsustainable. In support of his contention, reliance is placed on the decision of the Apex Court in the case of ***Maharana Pratap Singh Vs. The State of Bihar and Others***[1] *(Maharana Pratap Singh),* decision of Co-ordinate Bench of this Court in the case of ***The State of Karnataka Vs. Sri Jagannath S. Yagaral and Another***[2] *(Jagannath S. Yagaral)* and also in the case of ***Sri Bhimaraya S/o Basappa Halli Vs. The State of Karnataka and Others***[3] *(Bhimaraya)*. Justifying the order of the Tribunal, learned counsel submits that the Tribunal has rightly exercised its power of judicial review, and noted material contradictions in the testimony of the witness. Accordingly, Tribunal's order does not warrant any interference.

7. Learned High Court Government Pleader appearing for the petitioner - State submits that the

[1] *Civil Appeal No.5497/2025 DD: 23.04.2025*

[2] *W.P.No.201735/2023 DD:18.08.2023*

[3] *W.P.No.205561/2019 c/w CCC No.200115/2020 DD:10.02.2022*

disciplinary enquiries are distinct from criminal trials, and acquittal of an accused in a criminal case does not debar the employee from initiating or continuing disciplinary proceedings in exercise of its administrative jurisdiction. It is further submitted that in the present case, the receipt of the amount by the respondent and its recovery from his possession stands proved during the departmental proceedings. Being a Government Servant, the mere receipt of any amount without authority constitutes misconduct under Rule 16(4) of the Karnataka Civil Services (Conduct) Rules, 1966. Therefore, the recovery of the tainted amount from the respondent lends credence to the charge of misconduct, irrespective of the outcome of the criminal proceedings. In support of her contention, reliance is placed on the decision of the Apex Court in the case of ***State of Karnataka and Another Vs. Umesh***[4] *(Umesh)* and also in the decision of the Co-ordinate Bench

[4] *(2022) 6 SCC 563*

of this Court in the case of ***Sri Nagesh Vs. The State of Karnataka and Another***[5] *(Nagesh).*

8. Having heard the learned counsel appearing for the parties, the points that arises for our consideration are:

i. *Whether findings of misconduct recorded in the disciplinary enquiry is sustainable and whether the order of the Tribunal warrants any interference?*

ii. *Whether the acquittal in the criminal proceedings involving same charges, facts, witnesses and circumstances in both the departmental enquiry and criminal proceedings are identical or substantially similar, whether in such cases, upholding of finding in disciplinary proceedings would be unjust, unfair and oppressive?*

9. **Point No.1**: It is well settled law that, in exercise of judicial review, Courts do not act as an Appellate Forum over the findings of the Disciplinary

[5] *W.P.No.19669/2022 DD: 27.09.2024*

Authority. Courts do not re-appreciate the evidence on which the findings of misconduct have been arrived during the disciplinary enquiry. This principle is laid down by the Apex Court in the case of ***Umesh*** stated *supra*. The scope of judicial review is limited to examine whether;

i) the rules of natural justice have been complied with;

ii) the finding of the misconduct is based on some evidence;

iii) the statutory rules governing the conduct of disciplinary enquiry have been observed;

iv) whether the findings of the disciplinary authority suffer from perversity; and

v) the penalty imposed is disproportionate to the proven misconduct.

10. Bearing in mind the scope of judicial review, we have examined the evidence and the material on record. Before the Disciplinary Authority, four witnesses were examined as P.Ws.1 to 4. P.W.1 is the complainant who

categorically stated in the disciplinary proceedings that no demand was made by the respondent and that no work was pending before him. He also admitted that the application was filed in his wife's name and the respondent had merely explained the procedure. Further, P.W.1 stated that money was kept in the shirt pocket. He stated that he went to the office of the respondent and both of them went to the canteen to have a cup of tea. P.W.2 – the shadow witness gave a contradictory version differing with P.W.1 stating that P.W.1 and he went to the canteen because the respondent was not in the office and further deposed that the amount received by the respondent was placed in the pant hip- pocket. P.W.3 is the investigating officer who stated about the presence of a tape recorder allegedly containing the conversation of demand, however the alleged tape recorder was never produced and P.W.3 could not justify the absence. P.W.4 is the official, who categorically admitted in his cross-examination that he has personally not seen the demand as well as the acceptance

of the tainted amount by the respondent. P.Ws.1 to 4 having not supported the illegal gratification by the respondent, the Tribunal rightly exercised the power of judicial review observing that the findings of the disciplinary authority suffered from perversity.

11. We totally agree with the findings of the Tribunal, since the Disciplinary Authority has failed to appreciate the entire evidence adduced by the witnesses in proper perspective and prove the charges against the respondent. There being no evidence before the enquiry officer in respect of demand and acceptance of the tainted amount by the respondent, the Disciplinary Authority ought not to have passed an order of penalty imposing compulsory retirement from service on the respondent. Accordingly, point No.1 is answered.

12. **Point No.2**: It is well settled law that principles governing disciplinary enquiries a distinct from those applicable in criminal trials. In a criminal prosecution, the

burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt and the accused is entitled to presumption of innocence. In the contrast, the purpose of disciplinary proceedings initiated by an employer is to enquire into the allegation of misconduct by an employee, resulting in violation of the service rules that govern the employer-employee relationship. Unlike a criminal trial where the charge must be proved reasonable doubt, in a disciplinary proceedings, a charge of misconduct only needs to be established on the basis of preponderance of probabilities. The rules of evidence that apply to criminal trials do not strictly govern disciplinary enquiries. Therefore, the acquittal of an accused in a criminal case does not prevent the employer from initiating or continuing disciplinary proceedings under its jurisdiction.

13. While in acquittal in a criminal case does not automatically entitle an individual to setting aside of a dismissal from public service pursuant to disciplinary

proceedings, however, it is also well established that different legal position arises when the charges, evidence, witnesses and circumstances in both the departmental enquiry and the criminal trial are identical or substantially similar. In such cases, upholding the findings of the disciplinary proceedings may be considered unjust, unfair and oppressive, particularly when the criminal Court has written a clear finding of acquittal on merits. This nuanced proposition of law initially was emphasized in ***G.M. Tank Vs. State of Gujrat and Another*** (*G.M.Tank*)[6], wherein para No.30 reads as under:

> ***"30.*** *The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the*

[6] *(2006) 5 SCC 446*

appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

14. Reaffirmed by the recent decision in ***Ram Lal Vs. State of Rajasthan***[7] *(Ram Lal)* and further reiterated in ***Maharana Pratap Singh's*** case stated *supra*.

15. Plain reading of the material available on record reveals that the charge framed in the disciplinary proceedings and the allegation in the criminal proceedings are similar. The judgment in criminal Appeal No.200214/2023 reveals that the prosecution has failed to establish the necessary ingredients for the offences under which the respondent was charged, the *defacto* complainant completely turned hostile to the case of the prosecution and the shadow witness did not support the case of the prosecution with regard to the payment of bribe by the complainant to the respondent and the voice of the respondent in the conversation recorded was not identified by his higher officer. This observation in criminal appeal confirms that the respondent's acquittal was not based on mere technicality. It also needs to be observed

[7] *2024 (1) SCC 175*

here that in ***Ram Lal's*** decision stated *supra*, the Apex Court held that the terms like "benefit of doubt" or "honourably acquitted" should not be treated as formalities, and the Court's duty is to focus on the substance of the judgment, rather than the terminology used.

16. The Apex Court in the case of ***Maharana Pratap Singh*** stated *supra* affirmed that when both the proceedings stem from the same transaction, and the criminal Court acquits the accused on merits, then upholding the disciplinary action may be disproportionate and unfair especially in the absence of additional or independent evidence in the departmental enquiry.

17. The case of ***Nagesh*** stated *supra* relied upon by the learned High Court Government Pleader is distinguishable as in that case there was sufficient evidence to establish that the delinquent therein had received money, and the same was recovered from his

possession and thus the Co-ordinate Bench of this Court held that it could not be said that the delinquent had not committed any misconduct. Hence, the said decision is not applicable to the present facts.

18. On one hand, the Apex Court in the case of ***Umesh*** and Co-ordinate Bench of this Court in the case of ***Nagesh*** stated *supra,* it was held that the disciplinary proceedings are distinct and independent of criminal trials. It has been reiterated that misconduct in service jurisprudence did not meet the threshold of proof beyond reasonable doubt, rather, it must be establish on preponderance of probability. The said decision affirm that mere recovery of tainted money, if established during departmental enquiry, even in the absence of conviction in the criminal case, is sufficient to sustain a finding of misconduct under the applicable service conduct rules. On the other hand, the Apex Court in the case of ***G.M. Tank***, ***Ram Lal*** and ***Maharana Pratap Singh*** stated supra has carved out a narrow exception to this general principle. In

the said decision, it is held that where charges, evidence, witnesses and circumstances in the departmental enquiry and criminal proceedings are identical or substantially similar and where criminal trials result in an acquittal on merits, it would be unjust, oppressive and unreasonable to uphold the findings in the disciplinary proceedings. The respondent was honorably acquitted in Crl.A.No.200214/2023 involving the same incident, witnesses and facts. In the instant case, the only evidence to sustain misconduct was the testimonies of PW.1 and 2. PW.1 has turned hostile and did not support. P.W2 has partly supported. Both of them contradicted each other. The documentary or the electronic evidence (tape recorder) to prove the demand was not produced. The disciplinary authority failed to appreciate these contradictions and rendered a finding unsupported by reliable evidence. Since the same witnesses, facts and the charges form the basis of both proceeding and the criminal Court has delivered an honourable acquittal, continuing to

uphold the disciplinary penalty would be unfair and opposed to law. Accordingly, point No.2 is answered.

19. For the foregoing reasons, we hold that the Tribunal has rightly exercised the power of judicial review holding that the findings of the Disciplinary Authority suffered from perversity and the same does not warrant any interference and we pass the following:

ORDER

i. The writ petition is hereby ***dismissed***.

ii. The order passed by the Karnataka State Administrative Tribunal in Application No.1138/2018 dated 24.02.2022 is hereby ***confirmed***.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(K S HEMALEKHA)
JUDGE

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